

EMPLOYMENT LAW SUMMARY

Mississippi: Workers' Compensation – Employer Responsibilities



Because You're Different

Workers' compensation is a system of no-fault insurance that provides monetary and medical benefits to employees or their survivors for work-related injuries, diseases and deaths. Workers' compensation is governed by state law.

The Mississippi Workers' Compensation Law (WCL) establishes the procedures for handling claims in the state. The [Mississippi Workers' Compensation Commission](#) (MWCC) is responsible for administering the workers' compensation system and resolving disputed claims.

EMPLOYERS SUBJECT TO THE WCL

The WCL applies to all private employers with five or more employees in Mississippi. Under the WCL, an "employee" includes any person regularly in the service of an employer under any contract of hire or apprenticeship. Employment contracts may be expressed or implied.

EXCLUSIONS

Under Mississippi law, certain individuals are not considered employees and are not subject to the WCL. These individuals should not be counted toward the five-employee threshold. The following is a list of excluded individuals

- Sole proprietorship owners, partners of a partnership and corporate employees, if they:
 - Own at least 15 percent or more of their employer's stock; and
 - Waive workers' compensation coverage for themselves;
- Domestic servants;
- Farmers and farm laborers who do not process agricultural products for commercial purposes;
- Transportation and maritime workers who are covered under federal workers' compensation laws;
- Direct sellers and vendees; and
- Employees of any nonprofit charitable, fraternal, cultural or religious corporation or association.

COVERAGE REQUIREMENTS

Employers subject to the WCL must maintain adequate workers' compensation coverage for their employees. An employer that fails to obtain coverage as required is subject to several penalties, including fines and criminal charges. To satisfy the WCL's coverage requirement, an employer may either:

- Purchase a workers' compensation insurance policy from an authorized insurance carrier; or
- Obtain the MWCC's approval to self-insure (either individually or as part of a group).

Employers must pay the full cost of providing workers' compensation coverage. The WCL prohibits any employee from contributing to the cost of his or her WCL coverage.

VOLUNTARY INCLUSIONS

The WCL allows employers to voluntarily provide workers' compensation coverage for otherwise exempt employees. This provision applies to employers that are exempt from the WCL and employers that are subject to the law but have employees for whom coverage is not required. Employers that provide voluntary coverage must fully comply with the WCL for all covered employees.

VOLUNTARY EXCLUSIONS

As a general rule, employees may not waive their rights to coverage or benefits under the WCL. However, the law allows employers to exclude the following individuals from their coverage, as long as the individuals voluntarily agree to the exclusion in writing:

- Sole proprietorship owners;
- Partners of a partnership; and
- Corporate employees who own 15 percent or more of a private corporation's stock.

As noted above, the individuals mentioned above are not counted toward the five-employee threshold if they are excluded from coverage.

INSURANCE POLICY COVERAGE

Every workers' compensation insurance policy issued in Mississippi must comply with all WCL provisions and cover the insured employer's entire WCL liability. Any policy provision that is inconsistent with the WCL is automatically deemed invalid under the law. When an employer purchases an insurance policy, the insurance carrier that issued the policy becomes responsible for paying benefits and administering claims for the insured employer. However, insured employers must cooperate with their insurance carriers to ensure WCL compliance at all times.

POLICY DEDUCTIBLES

When purchasing an insurance policy, employers will have the option of including a deductible. Although deductibles can help reduce premium costs, employers that purchase an insurance policy with a deductible must be prepared to cover the entire deductible amount for every workplace injury that may occur. While insurance providers are required to pay the deductible amounts up front to cover WCL benefits, employers are ultimately responsible for reimbursing the deductible amount for every compensable injury.

DRUG-FREE WORKPLACE WORKERS' COMPENSATION PREMIUM REDUCTION ACT

Employers that cover their workers' compensation liability through an insurance policy may qualify for a 5 percent discount on their premiums if they establish a drug-free workplace program that complies with the Mississippi Drug-free Workplace Workers' Compensation Premium Reduction Act (Drug-free Workplace Act). This discount is only available from insurance companies that offer it and certify to the MWCC that a covered employer's program meets all requirements under the Drug-free Workplace Act.

To obtain the premium discount, an insured employer's drug-free workplace program must, at a minimum:

- Have a written drug-free policy statement;
- Comply with the WCL's procedures for any substance abuse testing program;
- Provide employee assistance resources;
- Provide at least one hour of education to all employees before instituting the program and at least every year; and
- Provide all supervisory personnel with at least two hours of training before instituting the program.

SELF-INSURANCE COVERAGE

Self-insured employers use their own assets, rather than an insurance policy, to cover their obligations under the WCL. An employer that wishes to self-insure must obtain authorization from the MWCC. To obtain this authorization, the employer must submit an [application](#) for self-insurance to the MWCC, along with specific documents showing that it has the financial ability to pay all benefits required under the WCL. The MWCC may also require an applicant to submit:

- A security deposit of at least \$100,000; and
- Proof that it has excess insurance coverage.

If the application is approved, the MWCC will issue a certificate of authorization that allows the employer to self-insure for one year. The employer must then apply for renewals each year.

Self-insured employers are required to maintain or contract for services with a workers' compensation claims office located within Mississippi and must notify the MWCC of its claims office address before processing any claims. The claims office must have personnel located within the state who have authority to issue checks as payment for all WCL claims. Once designated, the claims office becomes the self-insured employer's sole contact for the MWCC and has sole responsibility for maintaining the employer's claims records and filing required forms and reports with the MWCC.

Every self-insured employer is also required to provide any financial information requested by the MCWW at any time and to file all of the following with the MWCC:

- An annual safety report;
- A [report](#) outlining all WCL benefits paid during the year;
- Annual audited financial statements; and
- Reserve statements from an MWCC-approved loss reserve specialist at least every three years.

GROUP SELF-INSURANCE

The WCL allows certain groups of two or more employers to pool their resources and obtain authorization to self-insure as group. To meet the minimum eligibility requirements for group self-insurance authorization, the members of a group must:

- Have a combined net worth of at least \$1 million;
- Be engaged in a common type of business activity or pursuit; and
- Be members of the same bona fide trade association or trade group, which must:
 - Be domiciled in the Mississippi;
 - Have existed for five or more consecutive years before the application date; and
 - Not be comprised solely of members that are affiliates under common control.

Before a group may apply for self-insurance authorization, however, the group members must make a written or oral presentation to the MWCC to demonstrate its need to form the group and to show cause as to why the group should be approved for self-insurance. Once the MWCC approves a group's initial presentation, the group may file, among other things, a formal application and a nonrefundable \$5,000 filing fee to obtain a certificate of authority to self-insure as a group.

NOTICE POSTING REQUIREMENT

All employers subject to the WCL must post notices regarding their WCL compliance in conspicuous places in or around their places of business. These notices must be on at least 8.5-by-11-inch paper and include:

- The name, address and telephone number of the employer's workers' compensation insurance carrier or a statement that the employer is self-insured;
- The name, address and telephone number of any third-party administrator or other party responsible for processing and paying the workers' compensation claims for the insurance carrier or self-insured employer;
- The effective dates of the employer's insurance coverage or self-insurance certificate;
- The name of the person affiliated with the employer to whom employees should give notice of any work-related injuries or illnesses; and
- A statement regarding criminal penalties for fraud and other prohibited practices.

The MWCC provides a model [notice](#) that employers may use to comply with these requirements.

INJURY REPORTING AND RECORDKEEPING REQUIREMENTS

Employers must maintain records of any and all work-related injuries. These records must be available for MWCC inspection at all times. Employers must also file a Form [B-3](#) ("Employer's First Report of Injury or Occupational Disease") with the MWCC within 10 days after an employee's injury has resulted in:

- Five days of lost work time;
- Permanent disability;
- Serious head or facial disfigurement; or
- Death.

Employers do not have to file a Form B-3 with the MWCC for an injury that requires medical treatment but does not result in any of the above. For these types of injuries, however, employers must still complete a Form B-3, maintain it in their records and make it available to the MWCC upon request.

DRUG AND ALCOHOL TESTING

The WCL grants employers the right to administer drug and alcohol testing on employees who claim work-related injuries. If an employee refuses to undergo this testing or tests positive for alcohol intoxication or for illegal drug use immediately after an injury, the employer may deny the employee's claim on the basis that use of the substance was a contributing cause of the injury. For this purpose, illegal drug use includes the use of a valid prescription medication taken contrary to the prescriber's instructions or contrary to the warnings on the label. Alcohol intoxication is presumed if a test indicates that an employee's blood alcohol level is 0.08 percent or higher.

PROVIDING MEDICAL CARE

Under the WCL, employers must provide all medical care required to treat their employees' work-related conditions.

TREATING PHYSICIAN

Although employers may refer employees to specific health care providers, employees have the right to select their own physician to administer ongoing treatment for a work-related condition. Other than emergency situations, employers cannot require their employees to receive treatment from an employer-selected physician. However, employees may agree to select an employer-provided physician for their treatment. These agreements must be documented in writing. For this purpose, any physician that provides treatment for at least six months or performs surgery for a work-related condition is deemed to be the employee's choice of physician under the law. Once a treating physician has been selected, the WCL allows employers to refuse paying for any treatment an injured employee receives from a physician other than the one that has been selected. This provision does not apply during an emergency or when the treating physician provides a referral. Employers have to pay for the treatment provided by a physician other than the selected physician only if the employer (or its insurance carrier) approves the new physician in advance. Employers and insurance carriers are not required to report their physician change approvals to the MWCC.

MEDICAL REPORTS

Employers must file copies of all medical reports with the MWCC promptly after they receive them from a physician. Under the WCL, physicians that treat an employee for a work-related condition must send medical reports to the employer within 20 days after the first treatment and at least every 30 days while the treatment continues. In general, an employer will not be held liable for a medical expense if a physician fails to meet these requirements. Employers that question the treatment plan or medical opinions of an employee's treating physician may select a second physician to examine the employee. In these situations, employers must schedule the additional examination at a reasonably convenient time for the employee. Employers are also expected to pay the employee for his or her travel and all other reasonable expenses related to the examination or appointment. Employers must also cover the costs of the additional examination. The WCL requires employers to notify the MWCC in writing of any appointments for additional examination. Employers must also send copies of all reports related to the additional examination to the MWCC and the employee.

COMPENSABILITY DECISIONS AND BENEFIT PAYMENTS

Employers have 14 days from the time they receive notice or have knowledge of an employee's work-related condition to either begin paying benefits to the employee or deny the claim. If an employer begins paying benefits, it must also report the payment to the MWCC, using Form [B-18](#) ("Payment Report"), within the same 14-day period. The employer must then continue paying benefits to the employee every 14 days, unless the MWCC orders a different installment period. Employers must also notify the MWCC immediately of any suspension of benefits. If an employer denies a claim, it must complete and file Form [B-52](#) ("Employer's Notice of Controversion") with the MWCC within the initial 14-day period. However, failing to file this report on time does not necessarily prevent the employer from denying the claim at a later date. In addition, an employer that files a Form B-52 may still raise additional defenses that it did not include on its filed form.

MORE INFORMATION

Contact Heffernan Insurance Brokers or visit the MWCC [website](#) or more information on workers' compensation laws in Mississippi.

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